

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BERNADETTE RODRIGUEZ,

Plaintiff,

- against -

MEMORANDUM & ORDER
19-CV-1185 (PKC) (LB)

UNITED STATES,

Defendant.

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PAMELA K. CHEN, United States District Judge:

This action concerns groundwater contamination at Camp Lejeune in North Carolina and the alleged effects of its consumption on Plaintiff and her children. By Order dated August 20, 2019, the Court construed the claim as brought pursuant to the Federal Tort Claims Act (“FTCA”), dismissed it for lack of subject matter jurisdiction on the grounds that there was no allegation of exhaustion of required administrative procedures, and granted Plaintiff leave to file an amended complaint to correct the deficiencies of her complaint by, *inter alia*, alleging facts to show exhaustion of her administrative remedies under the FTCA.

On September 16, 2019, Plaintiff submitted a timely amended complaint in which she properly substitutes the United States as the sole Defendant and alleges that she filed an administrative claim on May 22, 2017 with the Department of the Navy and that a final agency decision was rendered by a letter dated January 25, 2019. (*See generally* Amended Complaint (“Am. Compl.”), Dkt. 5.) By Order dated October 2, 2019, Plaintiff was ordered to show cause within thirty days why this action should not be dismissed as time-barred, since the action was not filed within six months of the presumed date of mailing of the final agency decision. Plaintiff timely responded with a copy of the envelope indicating that the Department of the Navy mailed

the final agency decision, by certified mail, on January 31, 2019, rendering her July 31, 2019 complaint timely.

Accordingly, Plaintiff's amended complaint may proceed. The Clerk of Court is respectfully directed to correct the caption to reflect that the United States is the sole Defendant to this action. The Clerk of the Court is respectfully directed to issue a summons against the United States and to effect service of the amended complaint and this Order upon United States Attorney's Office for the Eastern District of New York without prepayment of fees.

This case is referred to the Honorable Lois Bloom for pretrial supervision. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be taken in good faith and therefore *in forma pauperis* status is denied for purpose of an appeal. *Coppedge v. United States*, 369 U.S. 438, 444–45 (1962).

SO ORDERED.

/s/ Pamela K. Chen

Pamela K. Chen

United States District Judge

Dated: November 18, 2019
Brooklyn, New York